

Rule 56(f) grants district courts discretion to “order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.” Fed.R.Civ.P. 56(f). “Where ... a summary judgment motion is filed so early in the litigation, before a party has had any realistic opportunity to pursue discovery related to its theory of the case, district courts should grant Rule 56(f) motions fairly freely.” *Burlington Northern & Santa Fe Ry. Co. v. The Assiniboine*, 323 F.3d 767, 773(9th Cir. 2003)

In this case, plaintiff filed its motion for summary judgment before any discovery was conducted. Defendants have filed a brief opposing plaintiff's summary judgment premised upon their statutory claim; however, after a review of the documents in their possession, defendants find that they do not have sufficient information to permit them to submit opposing affidavits or otherwise respond to the averments in plaintiff's statement of undisputed material facts which support its claims premised upon the Commerce Clause and the Equal Protection Clause. Defendants need discovery in order to respond to and counter plaintiff's allegations of Commerce Clause and the Equal Protection Clause violations.

For these reasons, defendants ask the Court to grant this motion, deny plaintiff's motion for summary judgment premised upon the Commerce Clause and the Equal Protection Clause and permit discovery to proceed.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

By: s/Gwendolyn T. Mosley
GWENDOLYN T. MOSLEY
Senior Deputy Attorney General
Attorney I.D. No. 29157

Office of Attorney General
Civil Litigation
15th Floor, Strawberry Square
Harrisburg, PA 17120

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

(717) 787-1180 – Phone
(717) 772-4526 – Fax

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